

## Department of the Army, DoD

## § 534.3

courts, boards, and commissions, but will receive no extra pay for such service.

(i) *Persons receiving pay from Government.* Compensation for clerical duties performed for a court will not be paid to a person who is in the pay of the Government, except retired military members to the extent permitted under the dual compensation laws.

### § 534.3 Allowable expenses for witnesses.

(a) *Military members*—(1) *On active duty.* Members in the military service, on active duty, when required to appear as witnesses before courts will receive the appropriate travel and transportation allowances prescribed in chapter 4, Joint Travel Regulations.

(2) *Retired members.* Retired military members, not on active duty, when called as witnesses (other than expert witnesses), are entitled for their services as such to the mileage and other fees prescribed in paragraph (b)(3) of this section, for civilian witnesses not in Government employ.

(b) *Civilians*—(1) *General.* (i) Persons not subject to military law when called as witnesses are entitled to the fees and mileage allowed to witnesses attending courts of the United States.

(Article 47, Uniform Code of Military Justice (10 U.S.C. 847; 1 Comp. Gen. 347))

(ii) When the court is sitting in a foreign country, the oversea commander within whose command the court is convened will fix fees and allowances to be paid to witnesses, not in excess of maximum rates permitted to witnesses attending the courts of the United States or the courts of the foreign country, whichever rates may be higher.

(2) *In Government employ.* Any officer or employee of the United States or any agency thereof, summoned as a witness on behalf of the United States, shall be paid his necessary expenses incident to travel by common carrier, or, if travel is made by privately owned automobile, mileage at a rate not to exceed 10 cents per mile, together with a per diem allowance not to exceed the rate of \$12 a day.

(62 Stat. 950, 63 Stat. 103, 704, 69 Stat. 394; 28 U.S.C. 1823(a))

(3) *Not in Government employ*—(i) *Excluding Alaska and Canal Zone.* A witness attending in any court of the United States or before a United States commissioner or person taking his deposition pursuant to any order of the court of the United States, will receive \$4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who are not salaried employees of the Government and who are not in custody and who attend at point so far removed from their respective residences as to prohibit return thereto from day to day will be entitled to an additional allowance of \$8 per day for expenses of subsistence including the time necessarily occupied in going to and returning from the place of attendance. In lieu of the mileage allowance provided for herein, witnesses who are required to travel between the Territories, possessions, or to and from the continental United States, will be entitled to the actual expenses of travel at the lowest first-class rate available at the time of reservation for passage, by means of transportation employed. When a witness is detained in prison for want of security for his appearance, he will be entitled, in addition to his subsistence, to a compensation of \$1 a day.

(ii) *In Alaska and Canal Zone.* (a) In Alaska such witnesses are entitled to the witness fees and mileage prescribed for witnesses before the United States district court in the judicial division in which the trial or hearing is held. Fees vary in the different judicial divisions.

(b) In the Canal Zone such witnesses are entitled to the witness fees and mileage as are prescribed for witnesses before the United States court in the Canal Zone.

(c) Responsible officers in Alaska and in the Panama Canal Zone will keep informed as to the fees payable in United States courts in those places.

(c) *Mileage*—(1) *General.* A civilian witness not in Government employ, when furnished transportation in kind by the Government, is entitled to 8 cents per mile less the cost of transportation furnished. A civilian witness residing within the jurisdiction of the

court, who is subpoenaed and attends the trial in obedience to such subpoena, is entitled to mileage between his residence and the place of trial, regardless of whether both are in the same city.

(2) *Computation.* Mileage at the rate of 8 cents per mile will be computed on the basis of the Rand McNally Standard Highway Mileage Guide regardless of the mode of transportation used.

(d) *Subsistence per diem allowance*—(1) *When payable.* The subsistence per diem allowance is payable only when the place of trial is so far removed from the place of residence as to prohibit return of the witness thereto from day to day and such fact is properly certified. (See 6 Comp. Gen. 835.)

(2) *Computation.* In computing the subsistence per diem allowance prescribed in paragraph (b)(3)(i) of this section, the calendar day beginning at midnight is the unit, and the subsistence per diem allowance accrues from the time it is necessary for the witness to leave his home in order to arrive at the place of trial at the appointed time until the time he could arrive at his home by first available transportation after his discharge from attendance, any fractional part of a day under such transportation to be regarded as a day for per diem purposes. (See 5 Comp. Gen. 1028, as modified by 6 Comp. Gen. 480 and 6 id. 835.)

(e) *Attendance fees*—(1) *Attendance at more than one case on same day.* A person attending as a witness in more than one case on the same day under a general subpoena to appear and testify is entitled to only one per diem for each day's attendance. If separate subpoenas are issued in each case, the defendants being different, the witness is entitled to separate per diem for actual attendance in each case. The duplication of fees on account of attendance as witness in more than one case on the same day does not apply to the 8-cent mileage allowance and does not apply to the per diem on \$8 in lieu of subsistence.

(2) *Attendance before officer taking deposition.* A witness who is required to appear before an officer (civil or military) empowered to take depositions and there to give testimony under oath to be used before a court is entitled for

such service and for the necessary travel incident thereto, including return travel, to the allowances prescribed in paragraphs (a) and (b) of this section, the same as though his appearance were before a court. (See 8 Comp. Gen. 18.)

(3) *Attendance before military courts or boards of limited jurisdiction.* A subpoena or other compulsory process addressed to a civilian by a military court or board which has not express statutory authority to issue such process, such as a board of officers convened to investigate and report upon the facts connected with the death of an enlisted member while on temporary duty, is void. Civilian witnesses who appear before such a board in response to such void process must be regarded as having done so voluntarily and are not entitled to witness fees, in the absence of a specific appropriation therefor. (See 8 Comp. Gen. 64.)

(4) *Computation.* The provisions of paragraph (d)(2) of this section are equally applicable for computation of the attendance fee.

(f) *Expert*—(1) *Fees paid.* An expert witness employed in accordance with Manual for Courts-Martial, 1951, paragraph 116, may be paid compensation at the rate prescribed in advance by the official empowered to authorize his employment. (See 11 Comp. Gen. 504.) In the absence of such advance authorization no fees, other than ordinary witness fees, may be paid for the employment of an individual as an expert witness. (See paragraph 116, Manual for Courts-Martial (Executive Order 10214).)

(2) *Limitations.* (i) An expert while employed on behalf of the Government is an officer or employee of the United States within the laws affecting traveling and subsistence expenses of officers and employees of the Government generally. His traveling allowances are therefore subject to the limitations prescribed in the Travel Expense Act of 1949 (63 Stat. 166; 5 U.S.C. 835-842) and the Standardized Government Travel Regulations. (See 6 Comp. Gen. 712.)

(ii) There is no authority for payment by the Government of fees to an expert, who was employed by an officer or employee of the Government to aid in the performance of his duties, other

## Department of the Army, DoD

## § 534.4

than an expert witness who actually appears as such (paragraph (b)(2) of this section).

(iii) A retired officer, not on active duty, employed as an expert witness is not entitled to any compensation in addition to his retired pay for such service. The traveling allowances of such a retired officer, so employed, are subject to the limitations prescribed in the Travel Expense Act of 1949 and the Standardized Government Travel Regulations. (See 6 Comp. Gen. 712.)

(g) *Witness not subpoenaed*—(1) *Compelled to testify*. A person who, although not subpoenaed, is present at trial or hearing before a court or other body authorized to compel the attendance of witnesses by compulsory process, and who is compelled or required to testify at such hearing, is entitled to fees and mileage allowances payable to witnesses.

(2) *Voluntarily testifies*. A person who was neither subpoenaed nor requested to appear as a witness, but who voluntarily requested and was granted permission to testify to certain matters considered pertinent to an inquiry being conducted, is not entitled to mileage and witness fees. (See 9 Comp. Gen. 255.)

### § 534.4 Other fees.

(a) *Service of subpoena*. Fees or compensation for the service of a subpoena by a civilian are not prescribed by the laws of the United States. Fees and mileage allowed by the local law for similar services may be paid. If no specific fee or mileage is fixed by local law, reasonable allowances may be paid. (See Dig. Op. JAG, 1912-40, sec. 379.)

(b) *Taking of depositions*—(1) *Fees of civil officers*. A civil officer before whom a deposition is taken may be paid the fees allowed by law of the place where the deposition is taken (or a reasonable fee if no specific fee is fixed by local laws), but no mileage or other allowance for travel of the civil officer to the witness is provided for or authorized by law. (See 2 Comp. Gen. 65.)

(2) *Travel of witnesses*. If the witness and the civil officer before whom the deposition is to be taken do not reside at the same place, the witness should be required to perform the necessary

travel, and he is entitled to mileage or other travel allowance therefor as prescribed in § 534.3(e)(2).

(3) *Oaths in matters of military administration*. Where the service of one of the officers designated in the Uniform Code of Military Justice, Article 136, is not available, fees may be paid to civil officers for administering oaths in matters relating to military administration, subject to the conditions indicated in paragraph (b)(1) of this section.

(c) *Interpreters*. An interpreter appointed under the Uniform Code of Military Justice, Article 28 (10 U.S.C. 828), is entitled for his services as such to the allowances prescribed for witnesses (§ 534.3).

(d) *Furnishing copies of official records or documents*. The fees provided by the local laws may be paid to the proper officials for furnishing such certified copies of public records or documents and expenses in connection with the procurement of photostatic copies, photographs, and negatives as are required by the court.

(e) *Attendance upon civil courts*—(1) *Cases involving performance of official duties*. A military member on active duty or a civilian in Government employ appearing on behalf of the United States in cases arising out of the performance of their official duties is entitled to transportation and per diem as prescribed in § 534.3(a)(1) and (b)(1). Payment may be made by Department of the Army finance and accounting officers and will be charged to Department of the Army appropriations available for travel expenses of military personnel and civilian employees.

(2) *Cases involving other than performance of official duties*. A military member on active duty or a civilian in Government employ appearing on behalf of the United States in cases involving other than the performance of their official duties is entitled to transportation or transportation allowances and per diem as may be prescribed by The Attorney General. The subpoena or letter requesting attendance will specify the rates payable and will cite the appropriation chargeable. Payment may be made by a Department of the Army finance and accounting officer and reimbursement obtained from the Department of Justice.